ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

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Authority: IC 2-5-18

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MEETING MINUTES[1]

Meeting Date:	**October 12, 2004**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

Members Present: **Sen. R. Michael Young, Chairperson; Sen. Luke Kenley; Sen. Lindel Hume; Sen. Richard Young; Rep. John Frenz; Rep. Phillip Hinkle; Rep. Michael Murphy.**

Members Absent: **Rep. Jerry Denbo.**

Senator R. Michael Young, Chairman of the Committee, convened the meeting at 10:00 a.m. Senator Young noted that the meeting's agenda would include a discussion of the following: (1) The Attorney General's review of administrative rules. (2) The status of rules proposed by the Department of Local Government Finance to provide for annual adjustments to real property assessments. (3) Rules proposed by the Department of Administration to regulate lobbying before executive branch agencies. (4) The Committee's final report and recommendations.

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[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.ai.org/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Review of Administrative Rules by the Attorney General

Jennifer Thuma, Legislative Counsel for the Attorney General's Office, discussed the role of the Attorney General in reviewing administrative rules. She suggested that the section of the administrative rulemaking statute that requires the Attorney General to review all administrative rules (IC 4-22-2-32) needs to be amended to better clarify the scope of the review. Ms. Thuma explained that the under the statute, the Attorney General's role is to review a rule for "legality." The statute specifically directs the Attorney General to consider the extent to which the adopted rule differs from the published rule, and whether the published rule adequately identifies all persons affected by the rule. The statute also requires the Attorney General to determine whether the adopted rule involves the taking of property without just compensation to the owner. In addition to considering these particular aspects of a rule, the Attorney General must examine the rulemaking process itself to determine whether the agency had statutory authority to adopt the rule, and whether the rulemaking process complied with IC 4-22-2.

As to the review of an agency's compliance with IC 4-22-2, Ms. Thuma indicated that uncertainty exists within the Office as to the extent of the Attorney General's role in determining compliance with IC 4-22-2-28, which requires agencies to seek a fiscal review from the Legislative Services Agency (LSA) if a rule is expected to have a fiscal impact of more than $500,000. Ms. Thuma explained that the determination of whether a fiscal review is required often involves economic determinations and assumptions that the Attorney General's office is not as well equipped to make as either the agency itself or LSA. Accordingly, Ms. Thuma suggested that a policy be established--or that IC 4-22-2-32 be amended--to provide a procedure in which the Attorney General would forward any rule that might require a fiscal analysis to the Committee for its review of the issues involved.

Senator Young thanked Ms. Thuma for her testimony and indicated that the Committee would take her recommendations under advisement.

Department of Local Government Finance Rule (LSA #02-297)

Next, the Committee heard testimony on the status of a rule that the Department of Local Government Finance (DLGF) is required to adopt to establish a system for annually adjusting the assessed value of real property. Under IC 6-1.1-4-4.5, the DLGF is required to adopt the adjustment rules to account for changes in assessed value in years in which a general reassessment does not occur. In 2003, IC 6-1.1-4-4.5 was amended to require that a system be in place for the adjustment of assessed values beginning with the 2005 assessment date.

With the proposed rules having been published for the first time in the September 1, 2004, edition of the Indiana Register,[2] several county assessors expressed concern that the rules would not be promulgated in time to allow them to apply the adjustment procedures, conduct any necessary assessments for the 2005 assessment date, and certify the results to county auditors in time for local units to prepare their budgets. Given the DLGF's slow progress in adopting the rules, the assessors suggested that by the time the rules are finally adopted, any changes to the published rules would require assessors to change the procedures already underway for the 2005 assessment date. This could create a situation in which new assessments are not certified to the county auditors on time, which in turn would cause tax bills to be mailed late in 2006. In addition, the rule could cause significant shifts in the tax burden among different classes of taxpayers, similar to those that resulted

[2]See Exhibit 1.

from the recently completed general reassessment. One assessor who testified as to these and other concerns was Connie Prible, Wells County Assessor.

(1) Testimony from Connie Prible

In addition to representing Wells County, Ms. Prible appeared before the Committee on behalf of the Indiana County Assessors Association. Ms. Prible stressed that she was not suggesting that the rule should not be adopted. Rather, she argued that the rule's implementation should be delayed until the 2006 assessment date. She claimed that having to undertake assessed valuation adjustments in 2005 would mean that tax bills would be delayed, which in turn would delay the receipt of tax revenues by local units, forcing them to borrow money to cover budgeted expenses. Alternatively, tax bills based on 2004 assessment values would have to be sent, resulting in the need for a process to reconcile differences between the taxes owed and the amounts collected, upon completion of the adjustments.

Senator Hume commented that the statute requiring these "trending rules" was intended to ensure that the data used to value property was the most up-to-date data available. He agreed that delaying implementation of the rule until 2006 would allow for the use of more accurate data.

(2) Testimony from Judy Sharp

Senator Young then invited Judy Sharp, Monroe County Assessor, to offer her remarks. Appearing before the Committee on behalf of the Association of Indiana Counties, Ms. Sharp reported that many counties in Indiana would not be prepared to perform the required assessed value adjustments for the 2005 assessment date. According to Ms. Sharp, any legislative remedy, such as amending IC 6-1.1-4-4.5 to change the first scheduled assessed value adjustment from 2005 to 2006, would come too late. She explained that township assessors must complete their sales verifications--or submit a work plan for their completion--by January 15, 2005. If a work plan is submitted for a particular township, the county assessor must determine whether the sales verification process can be completed in a timely manner under the plan. If the county assessor determines that timely verifications cannot be performed, and the parties are unable to remedy the work plan, the county assessor becomes responsible for verifying the sales in the township. In light of these requirements, Ms. Sharp argued that undertaking the assessed value adjustments will take considerable time, involve considerable costs for local units, and require additional training for assessors. Noting that Brown County had still not completed its 2002 assessment, she questioned whether it was feasible for counties to perform adjustments so soon after the last general reassessment.

(3) Response from the Department of Local Government Finance

Acknowledging the concerns of county officials, Dan Mathis, Director of Legislative Relations for the DLGF, updated the Committee on the status of the rule. He first noted that IC 6-1.1-4-4.5 requires the DLGF to adopt rules that involve more than just the trending of real property. As a result, the DLGF has had to invest considerable time in establishing the recently published adjustment standards. In response to the suggestion that counties would not be prepared to adjust assessments for the 2005 assessment date, Mr. Mathis pointed out that although many counties were behind in their tax and budgeting processes in 2003, only eleven did not yet have certified budgets for 2004.

After stating that he was encouraged by the smaller number of counties behind schedule in their budgeting, Senator Hume asked whether changing the effective date for the first

adjustment from 2005 to 2006 would just encourage counties to procrastinate in undertaking the adjustments. Mr. Mathis indicated that whether that would occur would depend on the commitment of the assessing officials in any given county.

Senator Hume then suggested that if the legislature did act to delay the effective date of the rule to the 2006 assessment date, it could also require counties to submit an update of their efforts in implementing the adjustments sometime in 2005. He stressed that he did not want to impose burdensome reporting requirements, but merely wanted to require some evidence of the progress being made. Mr. Mathis suggested that one useful measure of progress would be to require counties to submit their sales data to LSA in an electronic format. He noted, however, that many counties do not have the technology to do so at this point.

Senator Kenley observed that the two county assessors who had addressed the Committee had completed their assessments on time. He asked Mr. Mathis what efforts the DLGF had made to get other counties to comply. Mr. Mathis reported that the DLGF had sent field staff to various counties to assist with the assessment process. Senator Kenley stated that he wanted the DLGF to take ownership of the problem. Noting that lawmakers had doubled the DLGF's budget in 2002 and 2004, he expressed his frustration that late assessments and tax bills continued to be a problem.

Senator Young then asked whether counties that fail to complete their assessments on time face any penalties. Mr. Mathis responded that the DLGF has little enforcement authority with respect to noncompliant counties. Senator Young suggested that giving the DLGF the authority to impose fines on counties might improve compliance. At that point, Senator Richard Young reminded the Committee that many counties simply do not have the resources necessary to conduct timely assessments. He pointed out that when he served as Crawford County Auditor, the county's limited resources dictated that he also serve as a defacto assessor.

Acknowledging that certain counties face particular challenges, the Chairman thanked Mr. Mathis for his testimony and indicated that the Committee would continue to monitor the issues surrounding the assessed value adjustment rule.

Department of Administration Rule (LSA #04-172)

Turning to the Department of Administration's proposed rule concerning executive agency lobbying,[3] Senator Young invited Jeffrey Dible to address the Committee. Mr. Dible introduced himself as an attorney speaking on behalf of the Indiana State Bar Association. He explained that as a tax attorney, he often works with the Department of State Revenue (DOR) on behalf of his clients. He expressed his concern that this work would require him to register as an executive agency lobbyist with the Department of Administration ("Department"). Of greater concern to Mr. Dible was that his work with the DOR would require to his clients register as "employers" of an executive agency lobbyist under the rule. Pointing out that the rule exempts from the registration requirement those individuals who petition an executive agency on their own behalf, Mr. Dible argued that the rule should provide a similar exemption for attorneys appearing before agencies on behalf of their clients.

Mr. Dible also noted that, for purposes of the rule, the Department had defined an "executive agency decision" as involving a regulatory decision or a decision of an

[3]See Exhibit 2.

executive agency concerning an expenditure of funds related to the award of a contract, grant, lease, or "other financial arrangement." Mr. Dible maintained that the failure of the Department to further define what qualifies as a "financial arrangement" would cause significant confusion about which arrangements would be subject to the rule's registration and reporting requirements.

Senator Kenley asked whether the Department had held a public hearing on the rule. Mr. Dible indicated that the hearing was scheduled for November 16, 2004. Senator Kenley suggested that Mr. Dible and other interested parties express their concerns to the Department at that hearing.

In response to Senator Young's request for any additional comments on the proposed rule, Glenna Shelby, speaking in her role as a legislative lobbyist, argued that while reporting and registration requirements were appropriate for legislative lobbying, these same requirements were not necessary in the administrative context. She explained that a lobbyist's efforts to influence the passage or defeat of legislation has widespread impact, while a person who appears before an executive agency is usually already subject to regulation. She also noted that the proposed rules would place a significant burden on nonprofit organizations, which often work closely with various state agencies.

As a representative of a nonprofit organization, Jean MacDonald echoed Ms. Shelby's concerns. Appearing on behalf of the Indiana Association for Home & Hospice Care, Ms. MacDonald reported that the Association's members regularly communicate with state agencies. According to Ms. MacDonald, many area agencies on aging would also be subject to increased administrative requirements under the rule.

Senator Young thanked the speakers for bringing the issue to the Committee's attention and encouraged them to attend the Department's public hearing in November.

Committee's Final Report and Recommendations

Senator Young then presented PD 3538,[4] a bill draft that would amend the administrative rulemaking statute (IC 4-22-2-28) that requires an agency to submit a rule with an estimated economic impact greater than $500,000 to the Legislative Services Agency (LSA) for a fiscal analysis. He noted that the Committee's consideration of several rules during the interim had revealed that agencies have not applied consistent standards in determining whether a fiscal analysis is required under IC 4-22-2-28. Accordingly, he offered PD 3538 to clarify the legislature's intent in enacting the statute. As presented, the bill would require an agency and LSA to consider the following: (1) Any incidental costs of compliance for regulated entities, in addition to direct costs imposed under the rule. (2) The rule's impact on an entity that already voluntarily complies with the rule. The bill would also clarify that the agency and LSA must consider the rule's *annual* economic after the rule is fully implemented following any phase-in period.

After input from Diane Powers, Director of the Office of Fiscal and Management Analysis for LSA, the Committee agreed to further study the draft and make any necessary changes. Senator Young indicated that he would present a revised draft at the Committee's next meeting.

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[4]See Exhibit 3.

Representative Hinkle then distributed a memo[5] summarizing his research into the home and community based services (HCBS) rules adopted by the Division of Disability, Aging, and Rehabilitative Services (DDARS). He reported that HCBS providers were concerned that the additional administrative requirements imposed by the rules would result in increased costs for them and would consume time and resources that could otherwise be devoted to delivering services. He noted that while DDARS had adopted the rules with the admirable intention of protecting Indiana's most vulnerable citizens, the rules could actually serve to reduce the number of HCBS providers by making it uneconomic for them to provide services. Accordingly, Representative Hinkle suggested that the General Assembly consider additional legislation to clarify its intent in enacting HB 493 (2003), which required the Family and Social Services Administration to expand long term care options by implementing a HCBS program. The Committee agreed to further investigate the issues raised by Representative Hinkle and to consider any recommendations for legislative action at the next meeting.

Finally, the Committee considered a draft of a final report[6] summarizing the Committee's work during the 2004 interim. The Committee agreed to remove a proposed recommendation that the 2005 General Assembly consider the public policy issues surrounding the Indiana Board of Accountancy's proposed rules to require peer reviews for CPA firms. The Chairman indicated that he had talked with the interested parties, who had agreed to work out a solution addressing the concerns of both the Board and the regulated practitioners. Agreeing that another meeting would be necessary to consider the issues raised by Senator Young and Representative Hinkle, the Committee agreed to delay adopting the report until its next meeting.

After scheduling the next meeting for 9:00 a.m. on November 16, 2004, Senator Young adjourned the meeting at 12:00 p.m.

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[5]See Exhibit 4.

[6]See Exhibit 5.